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E.O. 12958: DECL: 11/16/2034
TAGS: [MTCRE](#) [PARM](#) [PREL](#) [MNUC](#) [ETTC](#) [KSCA](#) [GE](#) [IN](#)
SUBJECT: RESPONSE TO GERMANY'S REQUEST FOR GUIDANCE ON
EXPORT WITH MTCR "NO UNDERCUT" POLICY IMPLICATIONS (C)

REF: BERLIN 001362

Classified By: ISN/MTR DIRECTOR PAM DURHAM FOR REASON: 1.4 (C).

11. (U) THIS IS AN ACTION REQUEST. PLEASE SEE PARA 4.

12. (C) On October 28, Germany's MFA Export Control Division provided Embassy Berlin with a non-paper requesting U.S. guidance by November 17 on a pending German export of extruded aluminum plates to India that may be similar to an export previously denied by the U.S., and therefore subject to the Missile Technology Control Regime's (MTCR) "no undercut" policy. Specifically, Germany is requesting more detailed information on the denials to ascertain whether the goods in the pending German application are the same. In addition, Germany requests additional information on the reason for the U.S. denials and the proliferation activities of the end-user, Vikram Sarabhai Space Center, Department of Space of the Government of India.

13. (C) We want to advise German officials that the MTCR "no undercut" policy does not apply in this instance, as the goods that were the subject of the U.S. denial were not MTCR controlled and were denied pursuant to U.S. "catch-alls." Germany is therefore under no obligation to deny the pending German export case. However, we greatly appreciate Germany's serious and thorough approach on export control issues, and want to advise Berlin that we believe they would be justified in denying this sale. The type of aluminum in the U.S. and German cases is very similar, the end-user (VSSC) is the same, and the stated end-use is nearly identical. We also want to emphasize that, as has been discussed repeatedly in the MTCR, technologies used in space launch vehicles (SLVs) and ballistic missiles are interchangeable, and countries that possess both SLV and ballistic missile programs find it impossible to erect an impenetrable barrier between the two. We also note that consistent with longstanding U.S. policy, the U.S. does not support India's missile or space launch vehicle programs. We therefore want to encourage Germany to pursue a policy similar to our own; i.e., not providing support to any of India's MTCR Category I programs - either ballistic missile or SLV.

14. (C) Action Request: Request Embassy Berlin approach appropriate host government officials to deliver talking points/non-paper in paragraph 5 below and report response. Talking points also may be provided as a non-paper.

15. (C) Begin talking points/non-paper:

(CONFIDENTIAL//REL GERMANY)

-- We want to respond to a matter of export control concern your government recently brought to our attention.

--Specifically, your MFA's export control division recently requested U.S. guidance on a pending German export of extruded aluminum plates to India.

--You noted that a similar export may have been previously denied by the U.S. per 2005 information notifications MI-US 05-005 and MI-US-05-006, and pursuant to the MTCR's "no undercut" policy, wanted to consult with us before approving this export.

--You requested detailed information on the U.S. denials to ascertain whether the goods in the pending German application are the same, and also sought the reasons behind the U.S. denials; in particular, whether the United States has information pertaining to proliferation activities of the end-user, the Vikram Sarabhai Space Center (VSSC).

--We value our close nonproliferation cooperation, and want to provide the following information.

--Because the aluminum that was the subject of the U.S. "catch-all" denials was not controlled by the MTCR, the MTCR's "no undercut" policy does not apply, and - unlike in a case involving MTCR-controlled items - Germany is not obligated to deny the export of the aluminum plates.

--However, we believe Germany would be justified in denying this sale for the following reasons:

--The aluminum sheets subject to the U.S. denial consisted of type AA2014-T4, AA2014-T6, and AA2014 (O), which are very similar in composition to the aluminum German export officials are now reviewing for export to India.

-- Moreover, in both the U.S. and German cases, the aluminum is intended to be used in an MTCR Category I space launch vehicle.

--As you know, SLV and ballistic missile technology are essentially interchangeable. As has been discussed extensively by the MTCR Partners, countries that possess both SLV and missile programs find it impossible to erect an impenetrable barrier between the two, and gains made in one program generally are not denied to the other.

-- Indeed, India's SLV program - including VSSC - is heavily integrated with its ballistic missile program.

-- VSSC is a key organization in India's SLV program, and was identified in the 2000 MTCR Information Exchange as being associated with the Indian missile program.

-- This means that providing equipment and technology to VSSC likely will have ramifications beyond the Indian space program and contribute - directly or indirectly - to India's efforts to develop increasingly longer-range military missiles.

-- Although there is no ban on U.S. exports to VSSC, and U.S. licensing authorities do approve sales to the firm for certain non-SLV/ballistic missile-related end-uses, VSSC is on the U.S. Department of Commerce's Entity List, which is a list of individuals, businesses, research organizations, and government and private organizations that are subject to specific license requirements for the export, re-export, and/or transfer of specified items.

-- Especially in the context of today's heightened proliferation concerns, even indirect support to India's Category I programs could have a destabilizing effect on security in South Asia.

-- As you are aware, the U.S. does not support India's missile or space launch programs, and works actively to impede India's access to missile-related technology and equipment.

-- Given our shared concerns about a missile race in South Asia, we hope Germany will pursue a policy similar to our own of not providing support to any of India's MTCR Category I programs - either ballistic missile or SLV.

-- We appreciate your consultation with us on this issue, and look forward to future cooperation on export control and nonproliferation matters.

16. (U) Washington POC is ISN/MTR John Paul Herrmann (Phone: 202-647-1430). Please slug any reporting on this issue for ISN/MTR, SCA/RA, EUR/CE, and EUR/PRA.
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